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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/743,892 | 12/22/2003 | Samy Ashkar | CMCC 512 DIV | 2155 |
| 23579 | 7590 | 03/23/2005 | EXAMINER | |
| PATREA L. PABST PABST PATENT GROUP LLP 400 COLONY SQUARE SUITE 1200 ATLANTA, GA 30361 | | | LUKTON, DAVID | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1653 | |
| DATE MAILED: 03/23/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,892

Applicant(s)

ASHKAR, SAMY

Examiner

David Lukton

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 18, 21, 22, 26, 29-31 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 15, 18, 21, 22, 26, 29-31, 34 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Pursuant to preliminary amendment, claims 1-14, 16, 17, 19, 20, 23-25, 27, 28, 32, 33 have been cancelled, claims 15, 18, 21, 22, 26, 29-31 amended, and claim 34 added. Claims 15, 18, 21, 22, 26, 29-31, 34 are pending.



Restriction to one of the following inventions is required under 35 U.S.C. §121:

- I. Claims 15 and 18, drawn to a method of promoting wound healing.
- II. Claims 21, 22, 29-31, 34, drawn to a method of promoting cell migration or cellular chemotaxis.
- III. Claim 26, drawn to a method of inhibiting formation of atherosclerotic plaques.

Each of Groups I, II and III is drawn to a different and distinct method. One is not obvious over the other, and different searches would have to be conducted. Certainly, the peptides to which the claims are drawn were well known prior to 1996. [However, in the event that the claims were limited to methods of using the peptides claimed in USP 6686444, it is likely that the restriction requirement would be withdrawn].

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer

an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

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In addition to the foregoing, applicants are required under 35 U.S.C. §121 to elect disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

In the event that Group I is chosen for initial examination, election of a specific, fully defined peptide is required. Also required is election of a specific tissue or cell type on which wound healing is to be performed.

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In the event that Group II is chosen for initial examination, election of the following is required:

- a) a specific, fully defined peptide;
- b) one of the following: (i) a method of promoting cell migration to a target site *in vivo*, (ii) a method of inducing cellular chemotaxis *in vitro*, or (iii) a method of inducing cellular chemotaxis *in vivo*;
- c) in the event that (b)(i) is elected, election of a cell type is required, along with a specific "target site"; in the event that (b)(ii) is elected, election of a cell type is required; and in the event that (b)(iii) is elected, election of a cell type is required.

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In the event that Group III is chosen for initial examination, election of a specific, fully defined peptide is required.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a generic claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.


Upon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP 809.02(a).

Should applicant traverse on the ground that the species are not patentable distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. §103 of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber, can be reached at 571-272-0925. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.


DAVID LUKTON
PATENT EXAMINER
GROUP 1600